

#### **401 KAR 52:020. Title V permits.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661-7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661-7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for air contaminant sources located in Kentucky that are required to obtain a Title V permit.

Section 1. Applicability. This administrative regulation shall apply to sources required to obtain a Title V permit, including:

- (1) Major sources;
- (2) Affected sources subject to the Acid Rain Program;
- (3) Sources subject to new source review under 401 KAR 51:017 or 401 KAR 51:052; and
- (4) Sources that are:
  - (a) Subject to a federal standard promulgated under 42 U.S.C. 7411 (NSPS) or 42 U.S.C. 7412 (NESHAP); and
  - (b) Not exempted or deferred from Title V permitting by the U.S. EPA.

Section 2. Exemptions. The following sources shall be exempt from this administrative regulation, except that an exempted source may voluntarily apply for a Title V permit:

- (1) Sources required to obtain a permit solely because they are subject to 40 C.F.R. 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters; and
- (2) Sources required to obtain a permit solely because they are subject to the requirements contained in 401 KAR 58:025, Asbestos standards.

#### **Section 3. General Provisions.**

- (1) Sources subject to this administrative regulation shall:
  - (a) Not construct, reconstruct, or modify without a permit or permit revision issued under this administrative regulation, except as provided in Sections 13, 14, 15, 17, and 18 of this administrative regulation;
  - (b) Operate in compliance with a permit issued under this administrative regulation;
  - (c) Demonstrate compliance with applicable requirements if requested by the cabinet;
  - (d) Comply with 401 KAR 50:038, Emission fees;
  - (e) Submit an annual compliance certification pursuant to Section 21 of this administrative regulation;
  - (f) Submit an annual emission certification pursuant to Section 22;
  - (g) Apply for a permit renewal pursuant to Section 12 of this administrative regulation; and
  - (h)1. Allow authorized representatives of the cabinet to enter upon the premises where a source is located or emissions-related activity is conducted, or records are kept, at reasonable times:
    - a. To access and copy any records required by the permit;
    - b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
    - c. To sample or monitor substances or parameters to determine compliance with the permit and all applicable requirements.
2. Reasonable times shall be:

- a. During all hours of operation;
  - b. During normal office hours; or
  - c. During an emergency.
- (2) For permits issued to construct, reconstruct, or modify:
- (a) The permit shall become invalid if the permitted action:
    - 1. Is not commenced within eighteen (18) months after the permit is issued;
    - 2. Begins but is discontinued for a period of eighteen (18) months or more; or
    - 3. Is not completed within eighteen (18) months of the scheduled completion date;
  - (b) For phased construction projects:
    - 1. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement dates;
    - 2. The time period between construction of approved phases shall not count in determining that construction has been discontinued for eighteen (18) months or longer; and
    - 3. The cabinet may extend the time periods in this paragraph if the source shows good cause.
- (3) Sources that construct, reconstruct, or modify shall demonstrate compliance pursuant to 401 KAR 50:055 as follows:
- (a) Constructing or reconstructing sources shall demonstrate compliance with all applicable requirements;
  - (b) Modifying sources shall demonstrate compliance with all applicable requirements that:
    - 1. Become applicable following the modification; or
    - 2. May be affected as a result of the modification; and
  - (c) Sources that have not demonstrated compliance during the prescribed timeframe given in 401 KAR 50:055 shall operate only for purposes of demonstrating compliance unless otherwise authorized by an approved compliance plan or an order of the cabinet.

#### Section 4. Applying for a Permit, Permit Revision, or Permit Renewal.

- (1) Complete applications shall be submitted using Forms DEP7007AI to DD, which is incorporated by reference in 401 KAR 52:050, for the following permit actions:
- (a) Initial permits for sources commencing construction;
  - (b) The first Title V permit for sources that commence construction prior to January 15, 2001;
  - (c) Renewal permits; and
  - (d) Permit revisions, including administrative permit amendments, minor permit revisions, and significant permit revisions.
- (2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:
- (a) Forms DEP7007AA, BB, and CC shall not be required for the application of a source commencing construction unless a compliance plan is required under Section 3(3)(c) of this administrative regulation;
  - (b) Applications for permit revisions shall provide only the information related to the change and a certification by a responsible official pursuant to Section 23 of this administrative regulation; and
  - (c) Applications for permit renewals shall provide only the information that is new or different from the most recent source-wide permit application and certification by a responsible official pursuant to Section 23 of this administrative regulation.
- (3) Sources subject to Section 1(4) of this administrative regulation shall submit a complete application within one (1) year after the U.S. EPA publishes a final rule requiring the source to obtain a Title V permit.

- (4) Sources that submit an application with a claim of confidential information shall:
  - (a) Authorize the cabinet to submit the information to the U.S. EPA; or
  - (b) Submit the information to the cabinet and directly to the U.S. EPA.
- (5) Completed application forms shall be submitted to Kentucky Division for Air Quality, Attn: Permit Support Section, 300 Sower Boulevard, Frankfort Kentucky 40601:
  - (a) For initial permits, minor permit revisions, significant permit revisions, and permit renewals, the original plus two (2) copies; and
  - (b) For administrative permit amendments, the original only.
- (6) The cabinet may request up to seven (7) additional copies of the completed application form if needed for public review.
- (7) Forms DEP7007AI to DD may be obtained:
  - (a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999, or fax (502) 564-4666; or
  - (b) On the Internet at: <http://air.ky.gov>.

Section 5. Information Required on Application. Applications shall contain:

- (1) All the information needed to determine the applicable requirements and emission fees;
- (2) The following administrative information:
  - (a) Company name and address and, if different, plant name and address;
  - (b) Owner's and agent's names and addresses;
  - (c) Name, address, and phone number of the plant site manager or contact;
  - (d) Description of the source's processes and products; and
  - (e) Appropriate SIC Code;
- (3) The following emissions-related information:
  - (a) All emissions for which the source is major and all emissions of regulated air pollutants;
  - (b) All fugitive emissions, listed in the same manner as stack emissions;
  - (c) Additional information if needed to verify which requirements are applicable;
  - (d) Identification of the applicable requirements for each emissions unit;
  - (e) Identification and description of all emission units and emission points in sufficient detail to establish the basis for applicable requirements and emission fees;
  - (f) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
  - (g) Emission rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method;
  - (h) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine or limit emissions;
  - (i) Other information required by an applicable requirement, including stack height limitations developed pursuant to 401 KAR 50:042; and
  - (j) Calculations on which the information in this paragraph is based;
- (4) Citation and description of all applicable requirements, and the applicable test method for determining compliance with each;
- (5) An explanation of proposed exemptions to otherwise applicable requirements;
- (6) Other information if needed to implement and enforce other applicable requirements or to determine their applicability;
- (7) If applicable, information needed to determine the applicable requirements and emission fees, and to define the permit terms and conditions for:
  - (a) Each alternate operating scenario; and

(b) Emissions trading under federally-enforceable emissions caps containing proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

(8) A compliance plan containing:

(a) The compliance status for all applicable requirements, including:

1. For requirements with which the source is in compliance, a statement that the source will continue to comply; and

2. For requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance;

(b) A compliance schedule that:

1. Resembles or is at least as stringent as that contained in an order of the cabinet;

2. Is supplemental to, and does not condone noncompliance with, the applicable requirements upon which it is based;

3. Includes, for applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and

4. Includes, for requirements with which the source is not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates;

(c) For sources required to have a schedule of compliance to remedy a violation or non-compliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;

(9) A certification of compliance with all applicable requirements by a responsible official pursuant to Section 23 of this administrative regulation;

(10) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;

(11) A schedule for submission of compliance certifications during the permit term, to be submitted annually or more frequently if specified by the cabinet or in an applicable requirement;

(12) A statement describing the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements; and

(13) Insignificant activities as specified in Section 6(1) of this administrative regulation.

#### Section 6. Insignificant and Trivial Activities.

(1) Activities that meet the following conditions shall be classified as insignificant activities:

(a) The PTE from each activity shall not exceed:

1. One-half (1/2) tpy of combined HAPs; or

2. Five (5) tpy of a nonhazardous regulated air pollutant;

(b) The activity shall not involve the incineration of medical waste; and

(c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements.

(2) In applications for permits, permit revisions, and permit renewals, sources shall:

(a) Include descriptions for all insignificant activities;

(b) Include all applicable requirements for each insignificant activity; and

(c) Not be required to provide detailed estimates for insignificant activities.

(3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999, or fax (502) 564-4666.

(4) The cabinet shall maintain a list of approved trivial activities, which shall not be required to be included in permit applications. The list shall be made available:

- (a) On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999, or fax (502) 564-4666; or
- (b) On the Internet at: <http://air.ky.gov>.

#### Section 7. Duty to Supplement or Correct Application.

- (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information.
- (2) If new requirements become applicable to a source after the application is submitted, but before a draft permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.
- (3) Failure to supplement or correct an application shall be a violation of this administrative regulation and may result in:
  - (a) Termination of a permit;
  - (b) Revocation and reissuance of a permit;
  - (c) Revision of a permit; or
  - (d) Denial of a permit.

#### Section 8. Application Shield.

- (1) If a source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.
- (2) A source's authority to operate shall cease to apply if the source fails to submit additional information requested by the cabinet, by the deadline set by the cabinet, after the completeness determination has been made.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-I of "Cabinet Provisions and Procedures for Issuing Title V Permits", which is incorporated by reference in Section 26 of this administrative regulation, for:

- (1) Initial permits for sources commencing construction;
- (2) The first Title V permit for sources that commenced construction prior to January 15, 2001;
- (3) Significant permit revisions; and
- (4) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing Title V Permits."

#### Section 11. Permit Shield.

- (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements as of the date of permit issuance if:
  - (a) The applicable requirements are included and specifically identified in the permit; or
  - (b) The cabinet, in acting on the permit application or revision, determines in writing that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.
- (2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.
- (3) Nothing in the permit or permit shield shall alter or affect:

- (a) Emergency orders issued under 42 U.S.C. 7603, including the authority of the U.S. EPA under that section;
- (b) The liability of the owner or operator for violation of an applicable requirement prior to or at the time of permit issuance;
- (c) The applicable requirements of the Acid Rain Program; or
- (d) The ability of the U.S. EPA to obtain information from the source pursuant to 42 U.S.C. 7414.

#### Section 12. Permit Duration and Renewal.

- (1) Title V permits issued pursuant to this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units combusting municipal waste shall remain in effect for twelve (12) years and shall be reviewed by the cabinet every five (5) years.
- (2) Permits issued under the procedures of Section 2-III of "Cabinet Provisions and Procedures for Issuing Title V Permits" shall remain in effect until a Title V permit is issued to the source.
- (3) A source that is subject to an existing permit, authorization to operate, or order of the cabinet, shall operate in compliance with the existing terms and conditions until a final Title V permit is issued.
- (4) An application for a permit renewal shall be submitted at least six (6) months prior to expiration of the current permit.
- (5) Expiration of a permit shall terminate the source's authority to operate unless the source has submitted a timely and complete renewal application.
- (6) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied, if:
  - (a) The cabinet fails to issue or deny the renewal permit before the expiration of the previous permit; and
  - (b) The source has submitted a timely and complete renewal application.
- (7) If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may terminate or revoke and reissue the permit pursuant to 42 U.S.C. 7661d(e).

#### Section 13. Administrative Permit Amendments.

- (1) The following permit revisions may be processed as administrative permit amendments:
  - (a) Correct typographical errors;
  - (b) Change the name, address, or phone number of a person identified in the permit, or make similar minor administrative changes;
  - (c) Change in ownership or operational control if the cabinet determines that no other changes in the permit are necessary;
  - (d) Require more frequent monitoring or reporting; and
  - (e) Incorporate into a Title V permit the requirements from preconstruction review permits that:
    - 1. Were processed using procedures equivalent to those in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision; and
    - 2. Contained compliance requirements equivalent to those in this administrative regulation.
- (2) Sources requesting an administrative permit amendment shall submit the appropriate Forms DEP7007AI to DD reflecting the desired change and may implement the change immediately upon submittal.

(3) For administrative permit amendments in which only the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

(a) Administrative Information Form DEP7007AI showing the names and other information that has changed; and

(b) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

(4) The cabinet may allow coverage under the permit shield for a preconstruction review permit incorporated as an administrative permit amendment, if:

(a) The preconstruction review permit meets the relevant requirements for a significant permit revision under this administrative regulation; and

(b) The cabinet notifies the U.S. EPA of the proposed action as provided in Section 2-IV.5 of "Cabinet Provisions and Procedures for Issuing Title V Permits".

(5) Administrative permit amendments for the acid rain portion of a permit shall be governed by regulations promulgated pursuant to 42 U.S.C. 7651 to 7651o.

#### Section 14. Minor Permit Revisions.

(1) Except as provided in the Acid Rain Program the procedures in this section shall be used for permit revisions that:

(a) Do not violate an applicable requirement;

(b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of:

1. An emission limitation or other standard;

2. A source-specific determination for temporary sources of ambient impacts; or

3. A visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and which the source has assumed to avoid an otherwise applicable requirement, including:

1. A federally enforceable emissions cap assumed to avoid classification as a modification under Title I of the Act; and

2. An alternative emissions limit approved pursuant to 42 U.S.C. 7412(i)(5);

(e) Is not a modification under Title I of the Act; and

(f) Is not required to be processed as a significant permit revision.

(2) The procedures in this section may be used for changes involving the use of economic incentives, marketable permits, emissions trading, or similar programs in:

(a) The state implementation plan (SIP); or

(b) A federal requirement.

(3) Sources requesting a minor permit revision shall submit the appropriate Forms DEP7007AI to DD, including:

(a) A description of the change, and the resulting change in emissions;

(b) New applicable requirements that will apply after the change;

(c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that the change meets the criteria for use of minor permit revision procedures, and a request for their use;

(d) A suggested draft permit showing only the information that is new or different than the existing permit; and

(e) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(4) The source may implement the change immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and
2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.

(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(5) The permit shield shall not extend to minor permit revisions.

#### Section 15. Group Processing of Minor Permit Revisions.

(1) Group processing shall be used only for permit revisions that:

- (a) Meet the criteria for minor permit revisions; and
- (b) Are collectively below the following thresholds:

1. Ten (10) percent of the emissions allowed in the permit for the emission unit or units affected by the change; and

2. The lesser of twenty (20) percent of the applicable major source threshold or five (5) tpy.

(2) A source with two (2) or more pending minor permit revisions may apply for group processing by submitting:

- (a) A written request to use group processing;
- (b) A list of pending permit revision applications awaiting group processing, and a determination of whether the sum of all the revisions will equal or exceed a threshold in this section;
- (c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that all the pending revisions meet the criteria for use of group processing procedures;
- (d) A list of new requirements that will apply after each revision is made;
- (e) A suggested draft permit showing only the information that is new or different than the existing permit;
- (f) Certification that the source has notified the U.S. EPA of the proposed permit revision and included a brief description of the change; and
- (g) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(3) The source may implement the changes immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and
2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.



(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(4) The permit shield shall not extend to permit revisions eligible for group processing.

#### Section 16. Significant Permit Revisions.

(1) Except as provided in the Acid Rain Program, significant permit revision procedures shall be used for revisions that:

(a) Involve significant changes in the monitoring requirements or a relaxation in the reporting or recordkeeping requirements contained in the permit; or

(b) Do not qualify as administrative permit amendments or minor permit revisions.

(2) Significant permit revisions shall follow the same procedures that are required for initial permits and permit renewals.

(3) The permit shield shall extend to significant permit revisions.

#### Section 17. Off-Permit Changes.

(1) A permit revision shall not be required for changes that:

(a) Are not modifications under Title I of the Act;

(b) Are not subject to the Acid Rain Program;

(c) Do not violate any existing terms or conditions of the permit; and

(d) Meet all applicable requirements.

(2) Except for changes that qualify as insignificant activities under Section 6 of this administrative regulation, sources shall notify the cabinet and the U.S. EPA in writing at least seven (7) workdays prior to making each change. The notification shall include:

(a) A brief description of the change;

(b) The date on which the change will occur;

(c) Any change in emissions or pollutants that result from the change; and

(d) Any new applicable requirements that will apply after the change.

(3) Sources shall keep records describing:

(a) Off-permit changes that resulted in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit; and

(b) The emissions that resulted from those changes.

(4) Sources shall keep a copy of each change notice on file with the permit.

(5) The permit shield shall not extend to changes made under this section.

(6) Changes made under this section shall be incorporated into the permit upon renewal.

#### Section 18. Section 502(b)(10) Changes.

(1) A permit revision shall not be required for changes that:

(a) Are not modifications under Title I of the Act;

(b) Are not subject to the Acid Rain Program; and

(c) Do not exceed the emissions allowed under the permit.

(2) Sources shall notify the cabinet and the U.S. EPA, in writing at least seven (7) workdays prior to making each change. The notification shall include:

(a) A brief description of each change;

(b) The date on which the change will occur;

(c) Any change in emissions that will result; and

(d) Any permit term or condition that will no longer be applicable after the change.

(3) Sources shall keep a copy of each change notice on file with the permit.

(4) The permit shield shall not extend to changes made under this section.

(5) Changes made under this section shall be incorporated into the permit upon renewal.

#### Section 19. Reopening for Cause.

(1) A permit shall be reopened prior to expiration, if:

(a) An affected source or a source with a remaining permit term of three (3) or more years becomes subject to a new applicable requirement. A reopening:

1. Shall be completed not later than eighteen (18) months after promulgation of the new applicable requirement; and

2. Shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to Section 12(6) of this administrative regulation; or

(b) New requirements become applicable to an affected source subject to the Acid Rain Program; or

(c) The cabinet or the U.S. EPA determines that:

1. The permit contains a material mistake or an inaccurate statement was made when establishing the standards, terms or conditions of the permit; or

2. It is necessary to revise or revoke the permit to assure compliance with applicable requirements.

(2) Reopening a permit:

(a) Shall follow the same procedures as initial permits; and

(b) Shall affect only those parts of the permit for which cause to reopen exists.

(3) Permit reopenings shall be made as expeditiously as practicable.

(4) The permit and all its terms and conditions, including any permit shield that has been issued pursuant to Section 11 of this administrative regulation, shall remain in effect until the revised permit has been issued or denied.

Section 20. General Permits. The cabinet may, after notice and opportunity for public participation provided in 401 KAR 52:100, issue a general permit covering similar sources in the same source category.

(1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.

(2) Sources that qualify for a general permit may:

(a) Apply to the cabinet for coverage under the terms of the general permit; or

(b) Apply for an individual permit under this administrative regulation.

(3) An application for a general permit shall meet the requirements of this administrative regulation and shall include information necessary to determine qualification for, and to assure compliance with, the general permit.

(4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.

(5) The permit shield shall apply to general permits.

(6) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:

(a) The source shall be subject to enforcement action for operating without a permit; and

(b) The permit shield shall not be a defense to this violation.

(7) General permits shall not be authorized for affected sources except as provided in the Acid Rain Program.

(8) Coverage granted under a general permit shall not be a final permit action for purposes of judicial review unless the public review procedures in 401 KAR 52:100 are met.

## Section 21. Compliance Certifications.

(1) Sources shall certify compliance with all applicable requirements annually using Form DEP7007CC:

(a) Sources with Title V permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.

(b) All sources, including those that have not received a Title V permit, shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003.

(2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:

(a) Identification of the term or condition;

(b) Compliance status;

(c) The method used for determining compliance over the reporting period, and whether the method provided continuous or intermittent data; and

(d) The method currently used for determining compliance.

(3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 300 Sower Boulevard, Frankfort, Kentucky 40601, and a copy sent to the U.S. EPA and to the appropriate Regional Office listed in Section 26 of this administrative regulation.

Section 22. Annual Emissions Certification. An annual emission certification shall be submitted to the cabinet by sources subject to this administrative regulation.

(1) During the first quarter of each calendar year, the cabinet shall survey each source to determine its actual emissions during the preceding calendar year, and the source shall provide and certify the information requested and return the updated survey to the cabinet within thirty (30) days from the date that the survey is mailed to the source.

(2) Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation.

(3) If no response is received from a source, the cabinet may estimate its actual emissions based on prior history and other relevant information that is available.

(4) Failure by the cabinet to notify a source shall not relieve the source of its obligation to submit an annual emissions statement.

Section 23. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

(1) Applications for initial permits, permit revisions, and permit renewals;

(2) Reports;

(3) Compliance certifications; and

(4) Emissions certifications.

## Section 24. Emergency Provision.

(1) An emergency shall be an affirmative defense to enforcement actions brought for non-compliance with a technology-based emission standard if the source demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and the permittee can identify the cause of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) The source took all reasonable steps to minimize excess emissions during the emergency; and

(d) The source notified the cabinet as quickly as possible and followed-up, as soon as practicable but not later than ten (10) workdays after the emergency occurred, with a written report that contains:

1. A description of the emergency;
2. Any steps taken to mitigate emissions; and
3. The corrective actions taken.

(2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.

(3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 25. Public, Affected State, and U.S. EPA Review. All permits, permit renewals, and permit revisions issued under this administrative regulation, other than administrative permit amendments, shall be offered for review by the public, affected states, and the U.S. EPA pursuant to 401 KAR 52:100.

#### Section 26. Incorporation by Reference.

(1) "Cabinet Provisions and Procedures for Issuing Title V Permits", June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material is also available on the Internet at: <http://air.ky.gov>. (27 Ky.R. 617; 1281; 1779; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 4-2-2014; TAm eff. 7-8-2016; Crt eff. 9-12-2018; TAm eff. 2-14-2019.)